

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SAN ANTONIO POST ACUTE LLC, a California limited liability company; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRANDON MARTIN, an individual, on behalf of himself, and on behalf of all persons similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

AUG 01 2023

BY: Gilberto Villegas
Gilberto Villegas, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Bernardino Superior Court
San Bernardino Justice Center - 247 West 3rd Street, San Bernardino, CA 92415

CASE NUMBER:
(Número del Caso):

CIV SB 2317704

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jean-Claude Lapuyade, Esq. T: (619)599-8292 JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: **AUG 01 2023** Clerk, by Gilberto Villegas, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).) **Gilberto Villegas**
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

COPY

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

CASE ATTACHMENT COVER PAGE	(ENDORSED) ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino on Jul 31, 2023 <i>CLERK OF THE SUPERIOR COURT</i> <i>Deputy Clerk: Gilberto Villegas</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415 BRANCH NAME: San Bernardino Justice Center WEBSITE: http://www.sb-court.org	
ATTACHMENT NAME: Complaint: Representative Action Complaint	
CASE NAME: Bradnon Martin vs. San Antonio Post Acute LLC	CASE NUMBER: CIVSB2317704
Please log on to www.TurboCourt.com regularly for updates	

Please staple this to your original attachment

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BRANDON MARTIN, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

SAN ANTONIO POST ACUTE LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No:

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ]

PLAINTIFF BRANDON MARTIN (“PLAINTIFF”), an individual, on behalf of himself
and in his representative capacity for the State of California and fellow current and former
AGGRIEVED EMPLOYEES, defined *supra*, against: Defendant SAN ANTONIO POST ACUTE
LLC (“DEFENDANT” and/or “DEFENDANTS”) alleges on information and belief, except for his
own acts and knowledge which are based on personal knowledge the following:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5

6
7
8

9
10

- 11
-
- 12
-
- 13
-
- 14
-
- 15
-
- 16
-
- 17
-
- 18
-
- 19

20
21
2223
24

25

26
27
28

1 7. DEFENDANTS operate nursing homes in the state of California, including in the
2 county of San Bernardino where PLAINTIFF worked.

3 8. PLAINTIFF was employed by DEFENDANTS in California from June of 2022 to
4 May of 2023 as a non-exempt employee, paid on an hourly basis, and entitled to the legally
5 required meal and rest periods and payment of minimum and overtime wages due for all time
6 worked.

7 9. PLAINTIFF brings this action in his representative capacity on behalf of the State
8 of California and on behalf of all persons who are or previously were employed by
9 DEFENDANTS in California who performed work for DEFENDANTS in California and who
10 were classified as non-exempt employees (hereinafter “AGGRIEVED EMPLOYEES”) between
11 May 23, 2022 and the present (“PAGA PERIOD”).

12 10. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor
13 Code § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the
14 alleged Labor Code violations committed by DEFENDANTS.

15 11. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant
16 times were, employees of DEFENDANTS, within the meanings set forth in the California Labor
17 Code and the applicable Industrial Welfare Commission Wage Order

18 12. The true names and capacities, whether individual, corporate, subsidiary,
19 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
20 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
21 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
22 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
23 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
24 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
25 inclusive, are responsible in some manner for one or more of the events and happenings that
26 proximately caused the injuries and damages hereinafter alleged.

27 13. The agents, servants and/or employees of the DEFENDANTS and each of them
28 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its

1 authority as the agent, servant and/or employee of the DEFENDANTS, and personally
2 participated in the conduct alleged herein on behalf of the DEFENDANTS with respect to the
3 conduct alleged herein. Consequently, the acts of each DEFENDANT are legally attributable to
4 the other DEFENDANTS and all DEFENDANTS are jointly and severally liable to PLAINTIFF
5 and the other AGGRIEVED EMPLOYEES.

6 14. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of the
7 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
8 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
9 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
10 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
11 at all relevant times.

12 15. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
13 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
14 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
15 employee a wage less than the minimum fixed by California state law, and as such, are subject to
16 civil penalties for each underpaid employee.

17 16. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
18 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
19 wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES.

20 **JOINT EMPLOYER**

21 17. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to
22 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code*
23 *§ 2699(a).*);

24 18. Section 558 of the California Labor Code provides that "any employer *or other*
25 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
26 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
27 Commissions shall be subject to a civil penalty..." (*Lab. Code § 558(a).*);

28 19. Section 1197.1 of the Labor Code provides that "[a]ny employer *or other person*

1 acting either individually or as an officer, agent, or employee of another person, who pays or
2 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
3 local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* §
4 1197.1(a).)

5 20. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have
6 held that a corporate employer’s owners, officers and directors, are subject to civil penalties for
7 the employer’s failure to pay appropriate wages to its employees, and, since liability under either
8 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings
9 are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez*
10 *v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
11 Cal.App.4th 1112, 1145-1146.

12 21. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS,
13 and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the
14 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
15 caused the complaints, injuries, and damages alleged herein.

16 22. At all relevant times, each DEFENDANT, whether named or fictitious, was the
17 agent, employee or other person acting on behalf of each other DEFENDANT, and, in
18 participating in the acts alleged in this Complaint, acted within the scope of such agency or
19 employment and ratified the acts of the other.

20 23. Each DEFENDANT, whether named or fictitious, exercised control over
21 PLAINTIFF’s and the AGGRIEVED EMPLOYEES’ wages, working hours, and/or working
22 conditions.

23 24. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
24 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
25 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANT.

26
27 ///
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5

6
7
8
9
10

11

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the
2 PAGA PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 28. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
5 were required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time to time during the PAGA
8 PERIOD, DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES to work
9 without paying them for all the time they were under DEFENDANTS' control. Specifically,
10 DEFENDANTS required PLAINTIFF and the AGGRIEVED EMPLOYEES to work while
11 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. Indeed, there
12 were many days where PLAINTIFF did not even receive a partial lunch. As a result, the
13 PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
14 compensation by regularly working without their time being accurately recorded and without
15 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
16 policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time
17 worked is evidenced by DEFENDANTS' business records.

18 29. From time to time during the CLASS PERIOD, as a result of their rigorous work
19 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES were unable to take thirty (30) minute off duty meal breaks and
21 were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES were required to perform work as ordered by DEFENDANTS for more than five
23 (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS failed to
24 provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for
25 some workdays in which these employees are required by DEFENDANTS to work ten (10) hours
26 of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED
27 EMPLOYEES does not qualify for the limited and narrowly construed "on-duty" meal period
28 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were, from time to time, required to remain on duty and on call. DEFENDANTS'
2 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
3 meal breaks is evidenced by DEFENDANTS' business records. As a result of their rigorous work
4 schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance
6 with DEFENDANTS' strict corporate policy and practice.

7 **B. Rest Period Violations**

8 30. From time to time during the PAGA PERIOD, PLAINTIFF and other
9 AGGRIEVED EMPLOYEES were also required to work in excess of four (4) hours without being
10 provided ten (10) minute rest periods as a result of their rigorous work requirements and
11 DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied
12 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
13 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
14 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
15 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
16 time to time. When they were provided with rest breaks, PLAINTIFF and other AGGRIEVED
17 EMPLOYEES were, from time to time, required to take them on duty and/or on call. PLAINTIFF
18 and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu*
19 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
20 PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time denied their proper
21 rest periods by DEFENDANT and DEFENDANTS' managers.

22 **C. Unreimbursed Business Expenses**

23 31. DEFENDANTS as a matter of corporate policy, practice, and procedure,
24 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
25 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
26 PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
27 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
28 required to indemnify employees for all expenses incurred in the course and scope of their

1 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
2 her employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
5 believed them to be unlawful."

6 32. In the course of their employment, DEFENDANTS required PLAINTIFF and
7 other AGGRIEVED EMPLOYEES to incur personal expenses for the use of their personal cell
8 phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and other
9 AGGRIEVED EMPLOYEES were required to use their personal cell phones in order to perform
10 work related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
11 other AGGRIEVED EMPLOYEES for the use of their personal cell phones. As a result, in the
12 course of their employment with DEFENDANTS, the PLAINTIFF and other AGGRIEVED
13 EMPLOYEES incurred unreimbursed business expenses that included, but were not limited to,
14 costs related to the use of their personal cell phones, all on behalf of and for the benefit of
15 DEFENDANTS.

16 **D. Wage Statement Violations**

17 33. California Labor Code Section 226 required an employer to furnish its employees
18 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
19 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
20 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
21 name of the employee and only the last four digits of the employee's social security number or an
22 employee identification number other than a social security number, (8) the name and address of
23 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
24 period and the corresponding number of hours worked at each hourly rate by the employee.

25 34. From time to time during the PAGA PERIOD, when PLAINTIFF and other
26 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
27 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
28 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage

1 statements which failed to show, among other things, all deductions, the total hours worked and
2 all applicable hourly rates in effect during the pay period and the corresponding amount of time
3 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
4 periods.

5 35. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
6 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
7 Lab. Code § 226.

8 36. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
9 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
10 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
11 to clerical or inadvertent mistake.

12 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

13 37. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
14 continue to fail to accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
15 hours worked.

16 38. During the CLASS PERIOD, from time-to-time DEFENDANTS required
17 PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work,
18 including but not limited to, time spent undergoing Covid-19 health screenings which included
19 temperature checks and questionnaires. This resulted in PLAINTIFF and other AGGRIEVED
20 EMPLOYEES to have to work while off-the-clock.

21 39. DEFENDANTS directed and directly benefited from the undercompensated off-
22 the-clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

23 40. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
24 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES.

26 41. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document,
28

1 track, or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed
2 for all the work they performed.

3 42. PLAINTIFF and the other AGGRIEVED EMPLOYEES were non-exempt
4 employees, subject to the requirements of the California Labor Code.

5 43. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for
7 the off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES typically worked over forty (40) hours in a workweek, and more than eight (8)
9 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

10 44. DEFENDANTS knew or should have known that PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

12 45. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
13 wages due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the
14 time spent working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
15 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
16 applicable law is evidenced by DEFENDANTS' business records.

17 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
18 **and Redeemed Sick Pay**

19 46. From time to time during the PAGA PERIOD, DEFENDANTS failed and
20 continue to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
22 and redeemed sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES
23 forfeited wages due to them for working overtime without compensation at the correct overtime
24 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
25 DEFENDANTS' uniform policy and practice not to pay the AGGRIEVED EMPLOYEES at the
26 correct rate for all overtime and double time worked, meal and rest period premiums, and sick
27 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

28 ///

1 47. State law provides that employees must be paid overtime at one-and-one-half times
2 their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES were
3 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
4 employee’s performance.

5 48. The second component of PLAINTIFF’S and other AGGRIEVED EMPLOYEES’
6 compensation was DEFENDANTS’ non-discretionary incentive program that paid PLAINTIFF
7 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
8 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
9 basis with bonus compensation when the employees met the various performance goals set by
10 DEFENDANTS.

11 49. However, from time to time, when calculating the regular rate of pay in those pay
12 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double
13 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
14 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
15 compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked
16 rather than just all non-overtime hours worked. Management and supervisors described the
17 incentive/bonus program to potential and new employees as part of the compensation package.
18 As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
19 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in
20 a systematic underpayment of overtime and double time compensation, meal and rest period
21 premium payments, and redeemed sick pay to PLAINTIFF and other AGGRIEVED
22 EMPLOYEES by DEFENDANTS. Specifically, California Labor Code Section 246 mandates
23 that paid sick time for non-exempt employees shall be calculated in the same manner as the regular
24 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
25 not the employee actually works overtime in that workweek. DEFENDANTS’ conduct, as
26 articulated herein, by failing to include the incentive compensation as part of the “regular rate of
27 pay” for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
28 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

1 50. In violation of the applicable sections of the California Labor Code and the
2 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
3 matter of company policy, practice, and procedure, intentionally and knowingly failed to
4 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
5 all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as
6 required by California law which allowed DEFENDANTS to illegally profit and gain an unfair
7 advantage over competitors who complied with the law. To the extent equitable tolling operates
8 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD
9 should be adjusted accordingly.

10 **G. Unlawful Deductions**

11 51. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
12 and AGGRIEVED EMPLOYEES’ pay without explanations and without authorization to do so
13 or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
14 violated Labor Code § 221.

15 **H. Timekeeping Manipulation**

16 52. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
17 immutable timekeeping system to accurately record and pay PLAINTIFF and other
18 AGGRIEVED EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED
19 EMPLOYEES worked each day, including regular time, overtime hours, sick pay, meal and rest
20 breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and unilaterally alter
21 the time recorded in DEFENDANTS’ timekeeping system for PLAINTIFF and other
22 AGGRIEVED EMPLOYEES in order to avoid paying these employees for all hours worked,
23 applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest
24 breaks.

25 53. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-
26 time, forfeited time worked by working without their time being accurately recorded and without
27 compensation at the applicable pay rates.

28 ///

1 54. The mutability of the timekeeping system also allowed DEFENDANTS to alter
2 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
3 timekeeping system so as to create the appearance that PLAINTIFF and other AGGRIEVED
4 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were
5 not at all times provided an off-duty meal break. This practice is a direct result of
6 DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30)
7 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

8 55. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
9 wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the
10 time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to
11 not pay PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in
12 accordance with applicable law is evidenced by DEFENDANTS' business records.

13 **I. Unlawful Rounding Practices**

14 56. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
15 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
16 AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including
17 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
18 practice that resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES being
19 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
20 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
21 system for PLAINTIFFS and the AGGRIEVED EMPLOYEES in order to avoid paying these
22 employees for all their time worked, including the applicable overtime compensation for
23 overtime worked. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES, from time
24 to time, forfeited compensation for their time worked by working without their time being
25 accurately recorded and without compensation at the applicable overtime rates.

26 57. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
27 rounding policy and practice resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES' time
28 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding

1 policy and practice caused PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work as
2 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
3 duty meal break.

4 **J. Violations for Untimely Payment of Wages**

5 58. Pursuant to California Labor Code section 204, PLAINTIFF and the
6 AGGRIEVED EMPLOYEES were entitled to timely payment of wages during their
7 employment. PLAINTIFF and the AGGRIEVED EMPLOYEES, from time to time, did not
8 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
9 meal period premium wages, and rest period premium wages within permissible time period.

10 59. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to
11 take off duty meal and rest breaks and was not fully relieved of duty for his rest and meal
12 periods. PLAINTIFF was required to perform work as ordered by DEFENDANTS for more
13 than five (5) hours during a shift without receiving an off-duty meal break. Further,
14 DEFENDANTS failed to provide PLAINTIFF with a second off-duty meal period each
15 workday in which he was required by DEFENDANTS to work ten (10) hours of work. When
16 DEFENDANTS provided PLAINTIFF with a rest break, they required PLAINTIFF to remain
17 on-duty and on-call for the rest break. DEFENDANTS policy caused PLAINTIFF to remain
18 on-call and on-duty during what was supposed to be his off-duty meal periods. PLAINTIFF
19 therefore forfeited meal and rest breaks without additional compensation and in accordance
20 with DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also
21 provided PLAINTIFF with paystubs that failed to comply with Cal. Lab. Code § 226. Further,
22 DEFENDANTS also failed to reimburse PLAINTIFF for required business expenses related to
23 the personal expenses incurred for the use of their personal cell phone, on behalf of and in
24 furtherance of his employment with DEFENDANTS. To date, DEFENDANTS have not fully
25 paid PLAINTIFF the minimum, overtime and double time compensation still owed to him or
26 any penalty wages owed to him under Cal. Lab. Code § 203.

27
28 ///

FIRST CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Lab. Code §§ 2698 et seq.)
(Alleged by PLAINTIFF against all Defendants)

60. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

61. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

62. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all non-exempt employees who worked for Defendant in California during the time period of May 23, 2023, until the present (the "AGGRIEVED EMPLOYEES").

63. On May 23, 2023, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiffs may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

64. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, (e) failed to timely pay wages; (f) failed to provide accurate itemized wage statements; (g) failed to provide compliant meal and rest periods; and (h) failed to maintain true and accurate records all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;
2. An award of interest, including prejudgment interest at the legal rate;
3. An award of attorneys' fees and costs of suit, as allowable under the law;
4. Such other and further relief as the Court deems just and equitable; and

DATED: July 31, 2023

JCL LAW FIRM, APC

By: _____

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

EXHIBIT 1



Client # 62201

May 23, 2023

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

SAN ANTONIO POST ACUTE LLC

c/o Eugene Alkana
131 N. El Molino Ave
Pasadena, CA 91101

Via Certified U.S. Mail with Return Receipt No. 9589 0710 5270 0114 2242 45

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff BRANDON MARTIN ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendant SAN ANTONIO POST ACUTE LLC ("Defendant"). Plaintiff has been employed by Defendant since June of 2022, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him and other aggrieved employees, which among other violations of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This

information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,



Shani O. Zakay

Attorney for Plaintiff

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

BRANDON MARTIN, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

SAN ANTONIO POST ACUTE LLC, a
California limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et*
seq;
- 2) FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.

LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
9) UNPAID SICK PAY IN VIOLATION OF CAL. LAB. CODE § 246;
10) RETALIATION IN VIOLATION OF CAL. LAB. CODE §§ 98.6, 6310 & 1102.5.

DEMAND FOR A JURY TRIAL

PLAINTIFF BRANDON MARTIN (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant SAN ANTONIO POST ACUTE LLC (“DEFENDANT” and/or “DEFENDANTS”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. DEFENDANTS operate nursing homes in the state of California, including in the county of San Bernardino where PLAINTIFF worked.

3. PLAINTIFF has been employed by DEFENDANTS in California since June of 2022 as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by DEFENDANTS in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined

1 by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of the
2 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

3 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
5 the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which failed to
6 lawfully compensate these employees. DEFENDANTS' uniform policy and practice alleged
7 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANTS retained
8 and continue to retain wages due PLAINTIFF and the other members of the CALIFORNIA
9 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
11 the other members of the CALIFORNIA CLASS who have been economically injured by
12 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
13 relief.

14 6. The true names and capacities, whether individual, corporate, subsidiary,
15 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
16 presently unknown to PLAINTIFFS who therefore sues these DEFENDANTS by such fictitious
17 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this
18 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
19 ascertained. PLAINTIFFS is informed and believes, and based upon that information and belief
20 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
21 inclusive, are responsible in some manner for one or more of the events and happenings that
22 proximately caused the injuries and damages hereinafter alleged.

23 7. The agents, servants and/or employees of the Defendants and each of them acting
24 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
25 agent, servant and/or employee of the Defendants, and personally participated in the conduct
26 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
27 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
28 Defendants are jointly and severally liable to PLAINTIFF and the other members of the

1 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
2 Defendants' agents, servants and/or employees.

3 8. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of the
4 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
5 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
6 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
7 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
8 at all relevant times.

9 9. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
10 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
11 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
12 employee a wage less than the minimum fixed by California state law, and as such, are subject to
13 civil penalties for each underpaid employee.

14 10. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
15 unfair, and deceptive business practices whereby DEFENDANTS retained and continue to retain
16 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

17 11. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
18 enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and
19 other members of the CALIFORNIA CLASS who has been economically injured by
20 DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable
21 relief.

22 **JURISDICTION AND VENUE**

23 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
25 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
26 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

27 13. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because DEFENDANTS operate in locations across California, employ

1 the CALIFORNIA CLASS across California, including in this County, and committed the
2 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 14. In violation of the applicable sections of the California Labor Code and the
5 requirements of the Industrial Welfare Commission (“IWC”) Wage Order, DEFENDANTS as a
6 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
7 failed to provide legally compliant meal and rest periods, failed to accurately compensate
8 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
9 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
10 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
11 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
12 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal and rest
13 premiums at the regular rate of pay, failed to pay PLAINTIFF and other CALIFORNIA CLASS
14 Members redeemed sick pay at the regular rate of pay, failed to reimburse PLAINTIFF and other
15 CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFF and
16 the members of the CALIFORNIA CLASS with accurate itemized wage statements showing,
17 among other things, all applicable hourly rates in effect during the pay periods and the
18 corresponding amount of time worked at each hourly rate. DEFENDANTS’ uniform policies and
19 practices are intended to purposefully avoid the accurate and full payment for all time worked as
20 required by California law which allows DEFENDANTS to illegally profit and gain an unfair
21 advantage over competitors who comply with the law. To the extent equitable tolling operates to
22 toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should
23 be adjusted accordingly.

24 **A. Meal Period Violations**

25 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
26 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
27 meaning the time during which an employee is subject to the control of an employer, including
28 all the time the employee is suffered or permitted to work. From time to time during the CLASS

1 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
2 without paying them for all the time they were under DEFENDANTS' control. Specifically,
3 DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to
4 be PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not
5 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
6 Members forfeited minimum wage and overtime compensation by regularly working without their
7 time being accurately recorded and without compensation at the applicable minimum wage and
8 overtime rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other
9 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS' business
10 records.

11 16. From time to time during the CLASS PERIOD, as a result of their rigorous work
12 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
13 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
14 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
15 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANTS for
16 more than five (5) hours during some shifts without receiving a meal break. Further,
17 DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
18 second off-duty meal period for some workdays in which these employees are required by
19 DEFENDANTS to work ten (10) hours of work. The nature of the work performed by
20 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and
21 narrowly construed "on-duty" meal period exception. When they were provided with meal
22 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
23 required to remain on duty and on call. DEFENDANTS' failure to provide PLAINTIFF and the
24 CALIFORNIA CLASS Members with legally required meal breaks is evidenced by
25 DEFENDANTS' business records. As a result of their rigorous work schedules and
26 DEFENDANTS' inadequate staffing, PLAINTIFF and other members of the CALIFORNIA
27 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
28 DEFENDANTS' strict corporate policy and practice.

1 **B. Rest Period Violations**

2 17. From time to time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
4 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
5 DEFENDANTS' inadequate staffing. Further, for the same reasons, these employees were denied
6 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
7 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
8 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
9 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
10 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
11 CLASS Members were, from time to time, required to on duty and/or on call. PLAINTIFF and
12 other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
13 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
14 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
15 proper rest periods by DEFENDANT and DEFENDANTS' managers.

16 **C. Unreimbursed Business Expenses**

17 18. DEFENDANTS as a matter of corporate policy, practice, and procedure,
18 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
19 and the other CALIFORNIA CLASS Members for required business expenses incurred by the
20 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
21 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers
22 are required to indemnify employees for all expenses incurred in the course and scope of their
23 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
24 her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
27 believed them to be unlawful."
28

1 19. In the course of their employment, DEFENDANTS required PLAINTIFF and
2 other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal
3 cell phones as a result of and in furtherance of their job duties. Specifically, PLAINTIFF and
4 other CALIFORNIA CLASS Members were required to use their personal cell phones in order
5 to perform work related tasks. However, DEFENDANTS unlawfully failed to reimburse
6 PLAINTIFF and other CALIFORNIA CLASS Members for the use of their personal cell phones.
7 As a result, in the course of their employment with DEFENDANTS, the PLAINTIFF and other
8 CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but
9 were not limited to, costs related to the use of their personal cell phones, all on behalf of and for
10 the benefit of DEFENDANT.

11 **D. Wage Statement Violations**

12 20. California Labor Code Section 226 required an employer to furnish its employees
13 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
14 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
15 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
16 name of the employee and only the last four digits of the employee's social security number or an
17 employee identification number other than a social security number, (8) the name and address of
18 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the employee.

20 21. From time to time during the CLASS PERIOD, when PLAINTIFF and other
21 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
22 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS
23 also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
24 accurate wage statements which failed to show, among other things, all deductions, the total hours
25 worked and all applicable hourly rates in effect during the pay period and the corresponding
26 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
27 meal and rest periods.
28

22. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with Cal. Lab. Code § 226.

23. As a result, DEFENDANTS issued PLAINTIFF and other members of the CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

24. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

25. During the CLASS PERIOD, from time-to-time DEFENDANTS required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work, including but not limited to, time spent undergoing Covid-19 health screenings which included temperature checks and questionnaires. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

26. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

27. DEFENDANTS controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

28. DEFENDANTS were able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

29. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

1 30. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
2 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
3 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
4 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
5 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
6 pay.

7 31. DEFENDANTS knew or should have known that PLAINTIFF and the other
8 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

9 32. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
10 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control, and
11 benefit for the time spent working while off-the-clock. DEFENDANTS' uniform policy and
12 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
13 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
14 records.

15 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
16 **and Redeemed Sick Pay**

17 33. From time to time during the CLASS PERIOD, DEFENDANTS failed and
18 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
19 Members for their overtime and double time hours worked, meal and rest period premiums, and
20 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
21 forfeited wages due to them for working overtime without compensation at the correct overtime
22 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
23 DEFENDANTS' uniform policy and practice not to pay the CALIFORNIA CLASS Members at
24 the correct rate for all overtime and double time worked, meal and rest period premiums, and sick
25 pay in accordance with applicable law is evidenced by DEFENDANTS' business records.

26 34. State law provides that employees must be paid overtime at one-and-one-half times
27 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
28

1 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
2 employee's performance.

3 35. The second component of PLAINTIFF'S and other CALIFORNIA CLASS
4 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
5 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
6 performance for DEFENDANTS. The non-discretionary bonus program provided all employees
7 paid on an hourly basis with bonus compensation when the employees met the various
8 performance goals set by DEFENDANTS.

9 36. However, from time to time, when calculating the regular rate of pay in those pay
10 periods where PLAINTIFF and other CALIFORNIA CLASS Members worked overtime, double
11 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
12 discretionary bonuses, DEFENDANTS failed to accurately include the non-discretionary bonus
13 compensation as part of the employee's "regular rate of pay" and/or calculated all hours worked
14 rather than just all non-overtime hours worked. Management and supervisors described the
15 incentive/bonus program to potential and new employees as part of the compensation package.
16 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
17 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted
18 in a systematic underpayment of overtime and double time compensation, meal and rest period
19 premium payments, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS
20 Members by DEFENDANTS. Specifically, California Labor Code Section 246 mandates that
21 paid sick time for non-exempt employees shall be calculated in the same manner as the regular
22 rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or
23 not the employee actually works overtime in that workweek. DEFENDANTS' conduct, as
24 articulated herein, by failing to include the incentive compensation as part of the "regular rate of
25 pay" for purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the
26 underpayment of which is recoverable under Cal. Lab. Code Sections 201, 202, 203, and/or 204.

27 37. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a

1 matter of company policy, practice, and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
3 of pay for all overtime and double time worked, meal and rest period premiums, and redeemed
4 sick pay as required by California law which allowed DEFENDANTS to illegally profit and gain
5 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
6 operates to toll claims by the CALIFORNIA CLASS Members against DEFENDANTS, the
7 CLASS PERIOD should be adjusted accordingly.

8 **G. Unlawful Deductions**

9 38. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
10 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
11 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
12 DEFENDANTS violated Labor Code § 221.

13 **H. Timekeeping Manipulation**

14 39. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
15 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
16 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
17 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
18 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
19 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
20 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
21 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
22 missed rest breaks.

23 40. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
24 time-to-time, forfeited time worked by working without their time being accurately recorded and
25 without compensation at the applicable pay rates.

26 41. The mutability of the timekeeping system also allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
28 timekeeping system so as to create the appearance that PLAINTIFF and other members of the

CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS' uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

42. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

I. Unlawful Rounding Practices

43. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

44. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to

1 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
2 receiving an off-duty meal break.

3 **J. Violations for Untimely Payment of Wages**

4 45. Pursuant to California Labor Code section 204, PLAINTIFF and the
5 CALIFORNIA CLASS members were entitled to timely payment of wages during their
6 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
7 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
8 meal period premium wages, and rest period premium wages within permissible time period.

9 46. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
10 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
11 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
12 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
13 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
14 by DEFENDANTS to work ten (10) hours of work. When DEFENDANTS provided
15 PLAINTIFF with a rest break, they required PLAINTIFF to remain on-duty and on-call for the
16 rest break. DEFENDANTS policy caused PLAINTIFF to remain on-call and on-duty during
17 what was supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and
18 rest breaks without additional compensation and in accordance with DEFENDANTS' strict
19 corporate policy and practice. Moreover, DEFENDANTS also provided PLAINTIFF with
20 paystubs that failed to comply with Cal. Lab. Code § 226. Further, DEFENDANTS also failed
21 to reimburse PLAINTIFF for required business expenses related to the personal expenses
22 incurred for the use of their personal cell phone, on behalf of and in furtherance of his
23 employment with DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFF
24 the minimum, overtime and double time compensation still owed to him or any penalty wages
25 owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
26 individually does not exceed the sum or value of \$75,000.

27 **K. Plaintiff's Individual Claims**

28 47. PLAINTIFF has been employed by DEFENDANT in California since June of

2022.

48. Throughout his employment with DEFENDANT, PLAINTIFF was treated differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF for various protected activities.

49. During his employment, PLAINTIFF made reports of workplace harassment to DEFENDANT regarding the harassment that PLAINTIFF'S supervisor, Alicia Hemsley, subjected him to. Further, PLAINTIFF made reports to DEFENDANT regarding DEFENDANT'S unsafe workplace conditions and Health Insurance Portability and Accountability Act ("HIPPA") violations. PLAINTIFF'S reports of the foregoing fell on deaf ears. Instead, the workplace harassment has continued.

50. PLAINTIFF is informed and believes, and upon such information and belief alleges that, during PLAINTIFF'S employment with DEFENDANT, DEFENDANT retaliated against PLAINTIFF because he reported workplace harassment, unsafe workplace conditions and HIPPA violations.

51. PLAINTIFF is informed and believes, and upon such information and belief alleges that, during PLAINTIFF'S employment with DEFENDANT, DEFENDANT maintained a hostile work environment directed at PLAINTIFF because PLAINTIFF exercised his rights and reported workplace harassment, unsafe workplace conditions and HIPPA violations.

52. PLAINTIFF is informed and believes, and upon such information and belief alleges that he was harmed as a result of the unlawful and retaliatory practices of DEFENDANT were substantial factors in causing PLAINTIFF'S harm.

53. PLAINTIFF is informed and believes, and upon such information and belief alleges that, DEFENDANTS intentionally created or knowingly permitted these working conditions, including but not limited to, retaliatory employment practices against employees like PLAINTIFF who exercised their rights and reported workplace harassment, unsafe workplace conditions and HIPPA violations.

///

CLASS ACTION ALLEGATIONS

54. PLAINTIFF brings this Class Action on behalf of himself, and a California class defined as all persons who are or previously were employed by DEFENDANTS in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

55. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

56. The members of the class are so numerous that joinder of all class members is impractical.

57. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANT maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

- c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members accurate overtime wages;
- e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;
- f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA CLASS Members for required business expenses;
- g. Whether DEFENDANT issued legally compliant wage statements;
- h. Whether DEFENDANT committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- i. Whether DEFENDANT committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- j. Whether DEFENDANT committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

58. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

59. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and PLAINTIFF has the same interests as the other members of the class.

60. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS Members.

61. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

1 62. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
2 interest of the other CALIFORNIA CLASS Members.

3 63. There is a strong community of interest among PLAINTIFF and the members of
4 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
5 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
6 sustained.

7 64. The questions of law and fact common to the CALIFORNIA CLASS Members
8 predominate over any questions affecting only individual members, including legal and factual
9 issues relating to liability and damages.

10 65. A class action is superior to other available methods for the fair and efficient
11 adjudication of this controversy because joinder of all class members is impractical. Moreover,
12 since the damages suffered by individual members of the class may be relatively small, the
13 expense and burden of individual litigation makes it practically impossible for the members of
14 the class individually to redress the wrongs done to them. Without class certification and
15 determination of declaratory, injunctive, statutory, and other legal questions within the class
16 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
17 create the risk of:

- 18 a. Inconsistent or varying adjudications with respect to individual members of the
19 CALIFORNIA CLASS which would establish incompatible standards of conduct
20 for the parties opposing the CALIFORNIA CLASS; and/or,
21 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
22 which would as a practical matter be dispositive of the interests of the other
23 members not party to the adjudication or substantially impair or impeded their
24 ability to protect their interests.

25 66. Class treatment provides manageable judicial treatment calculated to bring an
26 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
27 the conduct of DEFENDANT.

28 ///

1 **FIRST CAUSE OF ACTION**

2 **Unlawful Business Practices**

3 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 67. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 68. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
9 Code § 17021.

10 69. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
11 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
12 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
13 as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may
15 be enjoined in any court of competent jurisdiction. The court may make such orders or
16 judgments, including the appointment of a receiver, as may be necessary to prevent the
17 use or employment by any person of any practice which constitutes unfair competition, as
18 defined in this chapter, or as may be necessary to restore to any person in interest any
19 money or property, real or personal, which may have been acquired by means of such
20 unfair competition. (Cal. Bus. & Prof. Code § 17203).

21 70. By the conduct alleged herein, DEFENDANTS have engaged and continue to
22 engage in a business practice which violates California law, including but not limited to, the
23 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
24 including Sections 201, 202, 203, 204, 210, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and
25 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
26 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
27 constitute unfair competition, including restitution of wages wrongfully withheld.

28 71. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and
unfair in that these practices violated public policy, were immoral, unethical, oppressive
unscrupulous or substantially injurious to employees, and were without valid justification or
utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203

1 of the California Business & Professions Code, including restitution of wages wrongfully
2 withheld.

3 72. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
4 fraudulent in that DEFENDANTS' uniform policy and practice failed to provide the legally
5 mandated meal and rest periods and the required amount of compensation for missed meal and
6 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
7 necessary business expenses incurred, due to a systematic business practice that cannot be
8 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
9 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
10 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
11 restitution of wages wrongfully withheld.

12 73. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
13 unfair, and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
14 other members of the CALIFORNIA CLASS to be underpaid during their employment with
15 DEFENDANTS.

16 74. By the conduct alleged herein, DEFENDANTS' practices were also unfair and
17 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to provide
18 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
19 required by Cal. Lab. Code §§ 226.7 and 512.

20 75. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
21 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
22 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
23 each workday in which a second off-duty meal period was not timely provided for each ten (10)
24 hours of work.

25 76. PLAINTIFF further demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
27 not timely provided as required by law.
28

1 77. By and through the unlawful and unfair business practices described herein,
2 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
3 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
4 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
5 detriment of these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS
6 to unfairly compete against competitors who comply with the law.

7 78. All the acts described herein as violations of, among other things, the Industrial
8 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
9 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
10 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
11 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

12 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
13 and do, seek such relief as may be necessary to restore to them the money and property which
14 DEFENDANTS have acquired, or of which PLAINTIFF and the other members of the
15 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
16 business practices, including earned but unpaid wages for all time worked.

17 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
18 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
19 and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from
20 engaging in any unlawful and unfair business practices in the future.

21 PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
22 and/or adequate remedy at law that will end the unlawful and unfair business practices of
23 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
24 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
25 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
26 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
27 unlawful and unfair business practices.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

4

5
6
7

8
9
10
11

12
1314
15
1617
18

19
20
21
22
23

24
25
26
27

1 88. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted
4 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
5 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
6 laws and regulations.

7 89. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANTS.

10 ///

11 90. During the CLASS PERIOD, PLAINTIFF and the other members of the
12 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
13 failure to pay all earned wages.

14 91. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
15 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
16 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
17 suffered and will continue to suffer an economic injury in amounts which are presently unknown
18 to them, and which will be ascertained according to proof at trial.

19 92. DEFENDANTS knew or should have known that PLAINTIFF and the other
20 members of the CALIFORNIA CLASS were under-compensated for their time worked.
21 DEFENDANTS systematically elected, either through intentional malfeasance or gross
22 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
23 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
24 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
25 for their time worked.

26 93. In performing the acts and practices herein alleged in violation of California labor
27 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
28 and provide them with the requisite compensation, DEFENDANTS acted and continues to act

1 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
3 consequences to them, and with the despicable intent of depriving them of their property and legal
4 rights, and otherwise causing them injury in order to increase company profits at the expense of
5 these employees.

6 94. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
7 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
8 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
9 California Labor Code and/or other applicable statutes. To the extent minimum wage
10 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
11 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
12 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
13 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
14 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
15 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
16 recover statutory costs.

17 **THIRD CAUSE OF ACTION**

18 **Failure To Pay Overtime Compensation**

19 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

20 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

21 95. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 96. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
27 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
28 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

1 97. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 98. Cal. Lab. Code § 510 provides that employees in California shall not be employed
4 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
5 they receive additional compensation beyond their regular wages in amounts specified by law.

6 99. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
7 including minimum and overtime compensation and interest thereon, together with the costs of
8 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
9 than those fixed by the Industrial Welfare Commission is unlawful.

10 ///

11 100. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
12 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
13 they worked, including overtime work.

14 101. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
15 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
16 implementing a uniform policy and practice that failed to accurately record overtime worked by
17 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
18 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
19 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
20 (12) hours in a workday, and/or forty (40) hours in any workweek.

21 102. In committing these violations of the California Labor Code, DEFENDANTS
22 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
23 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
24 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
25 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
26 regulations.

1 103. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
3 overtime compensation for their time worked for DEFENDANTS.

4 104. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
10 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 105. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
14 a failure to pay all earned wages.

15 106. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of
16 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
17 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
19 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANTS
20 failed to accurately record and pay as evidenced by DEFENDANTS' business records and
21 witnessed by employees.

22 107. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
25 CLASS have suffered and will continue to suffer an economic injury in amounts which are
26 presently unknown to them, and which will be ascertained according to proof at trial.

27 108. DEFENDANTS knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANTS systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
3 procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
4 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct overtime wages for
5 their overtime worked.

6 109. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
8 and provide them with the requisite compensation, DEFENDANTS acted and continue to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

14 110. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
15 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
18 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
19 employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore
20 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
21 penalties are sought herein. DEFENDANTS' conduct as alleged herein was willful, intentional,
22 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
23 entitled to seek and recover statutory costs.

24
25
26
27
28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3

4

5
6
7

8
9
10
11
12
13
14
15
16
17
18
19
20
21

22
23
24
25
26

114. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

116. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers. In addition, DEFENDANTS failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANTS' business records.

117. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order,

one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

118. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

119. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

120. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- a. Gross wages earned,
- b. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

121. When DEFENDANTS did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANTS violated Cal. Lab. Code § 226 in that DEFENDANTS failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

122. Further, from time to time, DEFENDANTS issued wage statements that failed to provide the accurate name and address of the legal entity that employed PLAINTIFF and other CALIFORNIA CLASS Members, in violation of Cal. Lab. Code § 226(a)(8).

123. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

124. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Pay Wages When Due

(Cal. Lab. Code § 203)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

125. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

126. Cal. Lab. Code § 200 provides that:

As used in this article:

- (d) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
- (e) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the to be paid for is performed personally by the person demanding payment.

127. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

128. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

129. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS Members' employment contract.

130. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in accordance with
2 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
3 quits, the wages of the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

4 131. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
5 terminated, and DEFENDANTS have not tendered payment of wages to these employees who
6 missed meal and rest breaks, as required by law.

7 132. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demands up to
9 thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
10 employees who terminated employment during the CLASS PERIOD and demand an accounting
11 and payment of all wages due, plus interest and statutory costs as allowed by law.

12 **EIGHTH CAUSE OF ACTION**

13 **Failure To Reimburse Employees for Required Expenses**

14 **(Cal. Lab. Code §§ 2802)**

15 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

16 133. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
17 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
18 Complaint.

19 134. Cal. Lab. Code § 2802 provides, in relevant part, that:
20 An employer shall indemnify his or her employee for all necessary expenditures or
21 losses incurred by the employee in direct consequence of the discharge of his or her
22 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

23 135. From time to time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab.
24 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
25 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'
26 benefit. DEFENDANTS failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
27 members for expenses which included, but were not limited to, the use of their personal cell
28 phones, all on behalf of and for the benefit of DEFENDANTS. Specifically, PLAINTIFF and

1 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal
2 cell phones to execute their essential job duties on behalf of DEFENDANTS. DEFENDANTS'
3 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA
4 CLASS members for expenses resulting from the use of their personal cell phones within the
5 course and scope of their employment for DEFENDANTS. These expenses were necessary to
6 complete their principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct
7 to assert any waiver of this expectation. Although these expenses were necessary expenses
8 incurred by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANTS failed to
9 indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these
10 expenses as an employer is required to do under the laws and regulations of California.

11 136. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
12 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
13 DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at the
14 statutory rate and costs under Cal. Lab. Code § 2802.

15 **NINTH CAUSE OF ACTION**

16 **UNPAID SICK PAY**

17 **(Cal. Lab. Code § 246, *et seq.*)**

18 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS and against all DEFENDANT)**

19 137. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
21 Complaint.

22 138. Cal. Labor Code Sections 246(I)(1) mandates that “[p]aid sick time for nonexempt
23 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
24 which the employee uses paid sick time, whether or not the employee actually works overtime in
25 that workweek.”

26 139. From time-to-time, during the PLAINTIFF and other members of the
27 CALIFORNIA CLASS were compensated at an hourly rate plus either non-discretionary incentive
28

1 pay. As a matter of law, the non-discretionary incentive compensation received by PLAINTIFF
2 and other members of the CALIFORNIA CLASS must be included in the “regular rate of pay.”

3 140. From time-to-time during the CLASS PERIOD, in those pay periods where
4 PLAINTIFF and other members of the CALIFORNIA CLASS earned hourly compensation and
5 either non-discretionary incentive compensation, and took paid sick time, DEFENDANT failed to
6 properly calculate the regular rate of pay for purposes of compensating paid sick time by omitting
7 non-discretionary incentive pay from the regular rate of pay.

8 141. DEFENDANT’s uniform policy and practice of omitting non-discretionary
9 incentive pay and/or piece-rate pay from the regular rate of pay for purposes of paying paid sick
10 pay, resulted in the underpayment of sick pay wages to PLAINTIFF and other members of the
11 CALIFORNIA CLASS. PLAINTIFF and other members of the CALIFORNIA CLASS therefore
12 request recovery of all unpaid wages, including sick pay wages, according to proof, interest,
13 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
14 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
15 overtime compensation is determined to be owed to other members of the CALIFORNIA CLASS
16 who have terminated their employment, DEFENDANT’s conduct also violates Labor Code §§
17 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under
18 Cal. Lab. Code § 203, which penalties are sought herein on behalf of other members of the
19 CALIFORNIA CLASS. DEFENDANT’S conduct as alleged herein was willful, intentional and
20 not in good faith. Further, PLAINTIFF and other members of the CALIFORNIA CLASS are
21 entitled to seek and recover statutory costs.

22 142. Cal. Lab. Code § 246(i) provides that:

23 An employer shall provide an employee with written notice that sets forth the
24 amount of paid sick leave available, or paid time off leave an employer provides in
25 lieu of sick leave, for use on either the employee’s itemized wage statement
26 described in Section 226 or in a separate writing provided on the designated pay
27 date with the employee’s payment of wages. If an employer provides unlimited paid
28 sick leave or unlimited paid time off to an employee, the employer may satisfy this
section by indicating on the notice or the employee’s itemized wage statement
“unlimited.”

1 143. From time to time, DEFENDANT failed to furnish PLAINTIFF and other
2 members of the CALIFORNIA CLASS with written wage statements setting forth the amount of
3 paid sick leave available to them, as required under Cal. Lab. Code §§ 246, *et seq.* As a result,
4 PLAINTIFF and other members of the CALIFORNIA CLASS are entitled to seek and recover
5 statutory costs.

6 **TENTH CAUSE OF ACTION**

7 **RETALIATION - Cal. Lab. Code §§ 98.6, 1102.5 and 6310**

8 **(Alleged by PLAINTIFF and against all DEFENDANTS)**

9 144. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
10 herein, the prior paragraphs of this Complaint.

11 145. At all relevant times, California Labor Code section 98.6 was in effect and was
12 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
13 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
14 employee may disclose illegality regarding unlawful conduct related to PLAINTIFF exercising his
15 rights and reporting workplace harassment, unsafe workplace conditions and HIPPA violations.

16 146. At all relevant times, California Labor Code section 1102.5 was in effect and was
17 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
18 employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the
19 employee may disclose illegality regarding unlawful conduct related to PLAINTIFF exercising his
20 rights and reporting workplace harassment, unsafe workplace conditions and HIPPA violations.

21 147. At all relevant times, California Labor Code section 6310 was in effect and was
22 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any
23 employee, including PLAINTIFF, for raising complaints about safety conditions or practices at the
24 workplace.

25 148. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT, and
26 DEFENDANT retaliated against him by taking adverse employment actions including wrongfully
27 terminating PLAINTIFF.
28

- 1 damages for overtime compensation due to PLAINTIFF and the other members of
2 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
3 thereon at the statutory rate;
- 4 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
5 the applicable IWC Wage Order;
- 6 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
7 which a violation occurs and one hundred dollars (\$100) per each member of the
8 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
9 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
10 violation of Cal. Lab. Code § 226.
- 11 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
12 penalty from the due date thereof at the same rate until paid or until an action
13 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 14 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
15 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 16 3. On PLAINTIFF'S individual claims:
- 17 a. For all special damages which were sustained as a result of DEFENDANTS'
18 conduct, including but not limited to, back pay, front pay, lost compensation and job
19 benefits that PLAINTIFF would have received but for the practices of
20 DEFENDANTS.
- 21 b. For all exemplary damages, according to proof, which were sustained as a result of
22 DEFENDANTS' conduct.
- 23 c. An award of interest, including prejudgment interest at the legal rate.
- 24 d. Such other and further relief as the Court deems just and equitable.
- 25 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 26 4. On all claims:
- 27 a. An award of interest, including prejudgment interest at the legal rate;
- 28 b. Such other and further relief as the Court deems just and equitable; and

1 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
2 including, but not limited to, pursuant to Labor Code § 218.5, § 226, § 246 and/or
3 § 1194.
4

5 DATED: May 23, 2023

ZAKAY LAW GROUP, APLC

6 By: 
7 Shani O. Zakay, Esq.
8 Attorney for PLAINTIFFS
9

10 **DEMAND FOR A JURY TRIAL**

11 PLAINTIFFS demands a jury trial on issues triable to a jury.
12

13 DATED: May 23, 2023

ZAKAY LAW GROUP, APLC

14 By: 
15 Shani O. Zakay, Esq.
16 Attorney for PLAINTIFFS
17
18
19
20
21
22
23
24
25
26
27
28